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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

COMMENTS OF SPRINT CORPORATION

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May 16, 1996

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SUMMARY

It is no exaggeration to suggest that this docket is the most important common carrier proceeding in the 60-year history of the Commission. It will set the framework for competition in the last monopoly market in telecommunications: local service. And the actions the Commission takes in this docket, together with those taken in closely related proceedings, will largely determine whether local competition will succeed or fail.

The 1996 Act gives the Commission only vague direction in how to resolve many of the specific issues here before it. This is apparent from a simple reading (if such a thing is possible) of the Act itself. Any claim that the statute is specific in all respects or that the Commission's role is narrowly limited can hardly be in earnest. The lack of clarity in the statute is not surprising. Congress was confronted with very technical issues, and because of the high economic stakes, the legislation was bitterly fought out in the political forum. Much of what the Commission is left to interpret reflects compromises, some of which may have been intentionally vague.

However, what <u>is</u> clear from the statute is that Congress had a <u>national</u> vision of creating an environment where local competition could take root, and that Congress entrusted -- indeed obligated -- the Commission to interpret the statute as

a coherent whole in order to make this vision a reality. In so doing, Congress created a new jurisdictional paradigm for carrier-to-carrier relationships which is very different from the previous separation of jurisdictional responsibilities. The Commission has been given over-arching policy responsibilities over matters that would have been "intrastate" under the 1934 Act, while state commissions have been given an important role in carrying out the policy directives of the Commission. This new partnership between the Commission and the states requires a careful balance between comity and the need for policies of nationwide applicability to bring about the goal of a competitive local market.

Clearly, effective local competition could not come about if the RBOCs' view -- that this Commission (and to a large extent state commissions) should stand aside, let the RBOCs enter the long distance market in-region on the earliest date permitted by statute, and simply rely on RBOCs to negotiate interconnection agreements with their competitors -- were accepted. Rather, as the Commission has correctly grasped, carriers with monopoly or market power have no incentive to cede such market power through negotiations with their new rivals and, conversely, those new rivals have no ability -- on their own -- to wrest such market power through negotiations. Any disparity in market power between established local

carriers and new entrants will translate directly into a disparity in bargaining power which will, in turn, be reflected in a negotiated result that is hardly likely to advance competition.

Under these circumstances, the Commission has no choice but to intervene if it is to carry out the mandate entrusted to it by Congress. This does not imply that the states are less capable or less trustworthy than the Commission. Instead, the need for concrete guidance by this Commission is a function of the fact that there are 50 states and that each state is perforce too limited to allow it, on its own, to carry out Congress's vision of a national competitive policy.

Unlike the legislative process, the regulatory process is an ongoing one. Congress could not have expected that the Commission -- particularly within a six month period -- would be able to fashion rules governing interconnection and local competition that will be immutable for all time. Rather, the Commission should concentrate initially on the key issues before it, and further refine its rules on an ongoing basis in light of experience and changing market conditions.

There can be lasting and effective local competition only if there is facilities-based competition. Experience teaches that if new entrants must rely on an incumbent's bottleneck facilities, the incumbent will find ways to exploit that bottleneck to the detriment of competition. If the RBOCs are

allowed to enter the long distance market in-region without facing facilities-based competition, and without an access charge regime that is truly cost-based, local competition would be likely to fail and long distance competition could be seriously impaired as well. Thus, the Commission should adopt policies that are likely to foster facilities-based entry into the local market.

At the same time, Congress created two other important avenues for opening the local market to competition: resale and the purchase of unbundled elements. The development of local competition will be a gradual process, and for the indefinite future, new entrants must have available the option of reselling the incumbent LEC's retail services and buying unbundled piece-parts to provide an alternative way of reaching consumers as well as a means to supplement their own facilities. Having such an alternative way to "resell" the services of an ILEC is fully consistent with Congress's desire to open the local market to competition and provides a critically important, procompetitive incentive to rationalize the pricing of existing ILEC services.

Whether or not the Commission concludes that access charges are directly implicated by the 1996 Act, properly priced unbundled network elements will undermine the existing, above-cost interstate and intrastate access charges. Sprint emphatically endorses the Commission's stated intention to

reform its access charge structure, and such reform must be completed before the RBOCs are allowed to enter the long distance market in-region. The states must also reform their access charges, and in so doing, must allow ILECs every reasonable opportunity to rebalance rates for retail services.

Finally, a critical condition for ensuring that the interconnections provided by incumbent LECs to their competitors are equal in quality to those which they use themselves is to ensure that the ILECs make available "electronic bonding" -- seamless mainframe-to-mainframe interfaces with the ILECs' back office systems -- so that competitive LECs relying on interconnection, unbundled network elements and resale have a real opportunity to offer customers services of the same quality as those provided by ILECs. The Commission should set deadlines for both the development of standards for electronic bonding and the implementation of those standards, and in no case should the Commission regard the equal in quality requirement to have been fully met until such implementation has taken place.

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COMMENTS OF SPRINT CORPORATION

I. INTRODUCTION

Sprint Corporation welcomes the opportunity to submit its comments in response to the NPRM released April 19, 1996 (FCC 96-182) in this docket. Sprint fully shares the Commission's view (¶¶1-2) that through the 1996 Act, Congress intended to open monopoly markets to competitive entry and entrusted the Commission with devising a new regulatory paradigm to make this intention a marketplace reality.

This rulemaking is clearly the key to the creation of the new paradigm, and is perhaps the most important proceeding the Commission has undertaken in 60 years of common carrier regulation. It is obvious from the thoroughness of the NPRM that the Commission fully appreciates the gravity of this proceeding. Sprint hopes that these comments, reflecting the views of a corporation that is engaged in all aspects of common carrier communications, including competitive and incumbent local exchange service, long distance service and

wireless communication, will assist the Commission in resolving these critically important issues.

Fostering local competition is the central focus of the common carrier provisions of the 1996 Act. In order for local competition to be effective and to take root as a lasting force in the marketplace, it must exist in the form of facilities-based competition. Although the 1996 Act also affords other useful avenues to local entry, including resale and the purchase of unbundled network elements from incumbent LECs, experience teaches that if new entrants must rely on bottleneck facilities of the incumbent, the incumbent -- regardless of how tightly regulated it is -- can and will find ways to exploit its bottleneck to the detriment of its competitors.

The necessity for facilities-based local competition has shaped Sprint's approach to the policies it recommends in these comments, and we urge the Commission, as it resolves the complex issues before it, to favor the alternatives that are most likely to foster facilities-based entry into the local market. If the RBOCs are allowed to enter the long distance market in-region without such competition having taken root, and without an access charge regime that is truly cost-based as well, not only would the local competition sought by Congress be likely to fail, but long distance competition could be seriously impaired as well.

In keeping with the Commission's request (¶291), the comments below are structured in conformity with the outline of the NPRM.

II. PROVISIONS OF SECTION 251

A. Scope of the Commission's Regulations

Sprint emphatically agrees with the Commission's view (¶26) that it "should take a proactive role in implementing Congress' objectives." Consistent with such a role, the Commission can and should adopt explicit rules to shape the implementation of competition in local markets. As the Commission points out (¶¶27-32), explicit rules of nationwide applicability will enhance the creation of an environment in which local competition can take root. Limiting state-by-state variations in regulatory requirements should simplify the business plans, and reduce the capital costs, of entrants into the local market. Similarly, such rules from this Commission should simplify the negotiating process under §252 by reducing the number and scope of disputed issues, should facilitate the states' role in approving agreements or resolving disputed issues within the tight statutory timeframes, will assist the courts in reviewing challenged determinations by state regulatory commissions, and will provide clear notice to the RBOCs of the behavioral

expectations that must be satisfied before their in-region entry into the long distance market can occur.

In ¶¶33-35, the Commission nonetheless raises the possibility that explicit national rules might unduly constrain states from adopting requirements addressing unique policy concerns that exist within the state jurisdictions and could stifle experimentation that could lead to optimal policies. Sprint believes that the advantages of explicit national guidelines far outweigh these possible disadvantages.

To begin with, the 1996 Act effects a major change in the division of jurisdictional responsibilities between the states and the Commission. Under the 1934 Act, the jurisdictional line was essentially "horizontal": the federal and state authorities each had plenary authority over interstate and intrastate communications respectively. By contrast, the 1996 Act creates a more vertical division of responsibilities. Section 251(d) accords the Commission a broad policy-making role over carrier-to-carrier interconnections, regardless of whether the interconnected traffic would have been "interstate" or "intrastate" under the 1934 Act. In addition, §253 gives the Commission plenary authority to preempt any state requirements that have the effect of precluding competitive entry in any telecommunications service, including intrastate service.

The states, on the other hand, have important responsibilities that reach into services that were jurisdictionally interstate under the 1934 Act. Under §252, and in accordance with the policies promulgated by this Commission, the states can arbitrate interconnection disputes between incumbent LECs ("ILECs") and other carriers, and must approve all interconnection agreements between ILECs and other carriers. In this regard, the states will play an all-important role of implementing the pro-competitive policies of the 1996 Act, and the Commission's rules thereunder, in such crucial matters as determining the prices for interconnection and unbundled network elements, the wholesale discounts ILECs must offer, and the proper charges for reciprocal transport and termination of interconnected traffic. As will be seen below, these matters directly or indirectly affect the charges for facilities used to provide interstate, as well as intrastate, services to the public. Similarly, the states have been given a role, by §271(d)(2)(B), in determining whether an RBOC should be allowed to provide interexchange service -- including both intrastate and interstate service -- from within its ILEC regions.

Sprint does not believe that "unique policy concerns" of the states (¶33) can legitimately override explicit national guidelines on the interconnection issues under §§251 and 252. Rather, the 1996 Act represents Congress' national vision of

full competition in all telecommunications markets, interstate and intrastate. That national vision clearly overrides any conflicting policy concerns of individual states. This does not in any way denigrate the creative efforts of many state commissions to open the local market to competition. In many respects, certain states have been ahead of this Commission in developing pro-competitive policies. However, while the Commission can learn from the states' efforts (and throughout the NPRM the Commission evinces a genuine willingness to do so in fashioning its rules), leaving major issues up in the air to be resolved by the states will inevitably complicate and lengthen the negotiation process between ILECs and other carriers, and will impair the states' ability to resolve disputed issues within the highly constrained time periods provided by §252, and in a manner consistent with the national policy objectives of the Congress and the Commission.

This is not to say that the Commission cannot benefit and learn from its state counterparts on a continuing basis. Effective local competition may well take quite some time to develop, and it would be unrealistic to expect that rules adopted within the first six months after the passage of the 1996 Act will be the final and best word on how to implement these key provisions of the statute. As the states implement this Commission's national policy directives, the Commission

should encourage continual feedback from the states so that it can modify and refine its rules in light of the states' experience on a going-forward basis.

Sprint concurs with the Commission (at ¶¶37-38) that §§251 and 252 apply to both interstate and intrastate aspects of interconnection, service, and network elements and that the Commission's rules should apply to both as well. We also agree that Congress must have intended §251 to take precedence over any contrary implication based on §2(b), notwithstanding that the 1996 Act left §2(b) unchanged. Section 251(d) plainly endows the Commission with the authority -- indeed the duty -- to establish a regulatory framework for §§251 and 252, sections which apply on their face without regard to the jurisdictional nature of the services to which interconnection is sought. Other provisions of the 1996 Act also subordinate state actions and policies with respect to intrastate service to those of this Commission, e.g., §§253 (entry barriers), 254(f) (universal service), 258 (PIC change procedures), and 276 (payphone services). If Congress had intended the jurisdictional split in §2(b) to remain unaffected by the 1996 Act, all of these very specific subordinations of state policy to federal policy would be nullities, and much of the 1996 Act would make no sense at all. The only way to read these provisions together with §2(b) that gives meaning to both is to infer (as the Commission does in ¶¶39-40) that while

Congress may have intended the §2(b) jurisdictional boundaries to remain in effect for "retail" services offered to end user customers, the detailed scheme for intercarrier relationships in Part II of Title II supersedes §2(b). Sprint also agrees with the Commission's conclusion (¶36) that there should be a single set of standards with which both arbitrated agreements and RBOC statements of generally available terms must comply.

The Commission also seeks comment on the relationship between §§251 and 252, on the one hand, and its enforcement authority under §208 on the other. Nothing in §§251 and 252 alters the Commission's jurisdiction under §208 to hear complaints alleging violations by any common carrier of any duty under the Act. The responsibilities that §252 confers on state commissions are much narrower than the scope of §251. In the first place, the §252 negotiation and arbitration mechanisms relate only to agreements between ILECs and other carriers, whereas §251 applies broadly to interconnection between all telecommunications carriers (in §251(a)) and imposes specific additional duties (in §251(b)) on local exchange carriers generally (i.e., not just ILECs). Furthermore, many of the substantive duties placed on ILECs by §251(c), such as nondiscriminatory provision of interconnection and network elements, are continuing in nature. Conduct violative of those duties could occur after the state commission's role of arbitrating and approving

agreements has been completed for that ILEC. In addition, §251(c) places a duty on ILECs to negotiate in good faith, and §252(b)(5) outlines conduct that is to be regarded as violative of that obligation, but nothing in §252 explicitly contemplates a state remedy for refusals to negotiate in good faith.[1]

Thus, while the Commission, as a matter of comity, may wish to refrain from acting on complaints that relate to the state approval process and court review thereof,[2] it should stand ready to hear complaints regarding other aspects of §251.

B. Obligations Imposed by Section 251(c) on "Incumbent LECs"

In ¶¶44-45, the Commission raises as a threshold issue whether it should now establish standards and procedures for demonstrating that a particular LEC should be treated as an incumbent LEC pursuant to §251(h)(2), and whether it or the states should impose on non-incumbent LECs any of the obligations that the statute imposes on ILECs. Sprint believes it is premature for the Commission to broaden the universe of incumbent LECs under §251(h)(2), and even to develop standards for doing so in the future. That provision

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[1] Section 252(b) empowers states to arbitrate disputed issues, but is silent as to the states' powers if an ILEC stonewalls the negotiating process altogether.

[2] Even with respect to such complaints, the Commission should not foreclose itself from taking action in egregious cases.

empowers the Commission to treat additional carriers as ILECs essentially when the entrant has market power equal to that of the ILEC or has supplanted the ILEC from its former market position. At the present time, local competition does not even begin to approach the level needed to justify designation of a competitive LEC ("CLEC") as an ILEC. Nor should the Commission divert time and attention from the initial implementation of §§251 and 252 within the prescribed six-month period, to consider formulating rules and standards under §251(h)(2). The Commission can and should refine its rules from time to time in light of experience, and this is one task the Commission can safely leave to a later time.

Likewise, the Commission should not empower the states to impose obligations on CLECs that the statute reserves for ILECs. Congress drew a clear distinction between the obligations that apply to all LECs and those that are specific to ILECs, and assigned authority to classify a CLEC as an ILEC only to the Commission. It would be inconsistent with §251(h)(2) for the Commission to delegate that responsibility to the states.

1. Duty to Negotiate in Good Faith

The Commission's rules should delineate and proscribe any conduct that it believes is facially inconsistent with the duty to negotiate in good faith. However, whether a

particular course of conduct reflects bad faith is very fact-specific, and it would not be possible to fashion detailed rules which consider, in advance, the myriad of factual situations that might arguably show bad faith bargaining. Instead, there should seem to be no alternative except for the Commission to deal with allegations of bad faith through the complaint process. Such adjudication (with perhaps some assistance from general experience) may shed further light on precisely what facts would be deemed by the Commission to evince a determination to bargain in bad faith, for later inclusion in the rules.

The difficulty of establishing "rules" is illustrated in a limited way by the two types of conduct identified as bad faith in ¶47. Sprint agrees with the Commission that there is no justification for requiring a party to agree in advance to limiting its legal remedies in the event the negotiations fail. However, the other course of conduct mentioned -- requiring the other party to sign a non-disclosure agreement -- does not automatically signal bad faith. It can be expected that parties to negotiations concerning interconnection would have to disclose technical information about their networks that is highly proprietary, and non-disclosure agreements relating to such information are commonplace and innocuous. While it is conceivable that other non-disclosure requirements could be a sign of bad faith, Sprint does not believe it would

be sound to prohibit non-disclosure agreements in toto. Each non-disclosure requirement, and the bargaining context in which it occurs, must be examined separately.

With respect to the related issues raised in ¶48, the statute clearly contemplates the submission of existing agreements, to which an ILEC subject to §251(c) is a party, to state commissions for approval. Sprint believes that, under general contract law, passage of the 1996 Act is a changed circumstance that would justify renegotiation of such agreements. Although §252(a)(1) plainly requires state approval of pre-existing agreements, it must be recognized that most of these pre-1996 agreements were entered into under a different statutory scheme, and without contemplation by the parties that the local market might become competitive. Many of these agreements will not comply with §251, and the Commission and state regulators should expect that the agreements will be renegotiated. Thus, it would be a mistake for the states to expend significant resources on reviewing agreements that may be short-lived. Accordingly, Sprint suggests that the most efficient way to proceed -- and one that would encourage parties to promptly conform their agreements to the 1996 Act -- would be to require the public filing of all such agreements with the states, and allowing CLECs to avail themselves of the terms of those agreements if

they have not been renegotiated within six months after these rules take effect.

2. Interconnection, Collocation, and Unbundled Elements

a. Interconnection

Sprint agrees with the Commission's tentative conclusion (¶50) that national uniform interconnection rules would facilitate competitive entry and should be adopted. There are no technical differences among carriers that relate in any fashion to the geographic boundaries of states (see ¶51). Thus, to the extent that accommodations need to be made for technical capabilities of various types of carriers, those variations should be incorporated in national rules rather than imposing the burden on all carriers -- especially new entrants -- of litigating these issues in 50 separate jurisdictions.

Sprint believes it is reasonable to construe the term "interconnection" (see ¶¶53-54) to simply refer to the physical linking of two networks, and not to the transport and termination of interconnected traffic (which are encompassed within the reciprocal compensation obligations in §251(b)(5)). As the Commission observes (¶53), this reading is consistent with the fact that §252(d) sets forth differing pricing standards for "interconnection" and "transport and termination."

(1) Technically Feasible Points of Interconnection

Given the time constraints for the promulgation of initial rules, the Commission should initially establish a presumption that interconnection at local and tandem switching points is technically feasible, and allow the states to resolve disputes regarding any additional requested points of interconnection, pursuant to the following guidelines: (1) the carrier requesting interconnection at any other points is obligated to define the point of interconnection with sufficient detail (e.g., the location of the requested point of interconnection and the type of equipment or facilities intended to be used) to permit meaningful evaluation by the ILEC; (2) the ILEC has the burden of proof to show that a requested point of interconnection is not technically feasible; (3) once interconnection at a particular point is made available by any ILEC, it should be presumed that it is technically feasible for other ILECs, using like technology, also to provide such interconnection. If an ILEC claims that interconnection at a requested point is not technically feasible, it should be required to:

- Offer economical alternatives to the interconnection that the ILEC believes is not technically feasible.[3]

[3] The ILEC should be required to offer such alternatives at the time that the ILEC tells the requesting carrier that the requested interconnection is not technically feasible.

- Describe how the requested interconnection functions are accomplished within the ILEC's own network.

- Explain why the ILEC's own interconnection functions cannot be used for the requested interconnection.

- Undertake studies and analyses to assess the the technical feasibility of the requested interconnection and provide all such studies and analyses.

- Provide all other relevant information and documents that the ILEC relied upon to conclude that the requested interconnection was not technically feasible.

These guidelines are consistent with the Commission's tentative conclusions in ¶¶56-58, and would help curb dilatory tactics on the part of the ILEC.

(2) Just, Reasonable and Non-Discriminatory Interconnection

The Commission should promulgate guidelines regarding the ILECs' obligations under §251(c)(2)(D). In general, the ILEC should allow a requesting carrier the same technical interconnections that it uses for itself or its affiliates, or provides to any other carrier. To the extent there are fixed costs involved in providing a particular interconnection, the agreement between the ILEC and the requesting carrier should provide for subsequent downward price adjustments relating to such costs if other carriers later purchase the same interconnection arrangement.[4] While the pricing standards

[4] This proposal is conceptually similar to the Commission's recently adopted cost-sharing plan for the relocation of microwave users by PCS licensees. See Amendment to the

will be discussed infra, the incumbents should impute, in the aggregate, the same interconnection charges as are charged to their competitors, plus the costs of any other services and functionalities actually used by the incumbent. Likewise, the incumbent cannot impose restrictions on how the interconnections can be used by the requesting carrier.

Beyond reflecting these principles in its rules, Sprint does not believe it is necessary at this time for the Commission to specify such details as performance standards, liquidated damages for failing to meet these standards, etc. (see ¶61). Inevitably, whether a particular carrier is engaging in discriminatory actions is very fact-specific, and it would be impractical to attempt to delineate, in advance, all of the practices which could be found to violate the non-discrimination obligation. However, this is one area in which the Commission would clearly retain authority under §208 to adjudicate complaints regarding carrier behavior inconsistent with §251(c)(2)(d). See Point II.A., above.

Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, First Report and Order (FCC 96-196, April 30, 1996).